

1
2
3
4
5
6
7
8
9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 CALEB L. MCGILLVARY, an
14 individual

15 Plaintiff,

16 vs.

17 NETFLIX, INC., et al.

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. 2:23-cv-01195-JLS-SK

**[PROPOSED] ORDER GRANTING
DEFENDANT NETFLIX, INC.'S
SPECIAL MOTION TO STRIKE
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Defendant Netflix, Inc. (“Netflix”) filed a Special Motion to Strike plaintiff Caleb “Kai” McGillvary’s (“Plaintiff”) First Amended Complaint pursuant to California’s anti-SLAPP statute, C.C.P. § 425.16. Having reviewed and considered the motion and all other papers and argument, and good cause appearing, the Motion is **GRANTED**.

The Court finds the following:

1. Netflix has established that Plaintiff’s claims against Netflix for defamation, false light, right of publicity, intentional infliction of emotional distress, and public disclosure of private facts are subject to a special motion to strike under C.C.P. § 425.16 because the claims arise out of statements made in a public forum and in connection with an issue of public interest; and

2. Plaintiff has not met his burden of establishing a probability of prevailing on the merits of each of his claims, as he has not plausibly alleged his claims. The Court specifically holds the following:

- a. Plaintiff’s defamation claim fails because Plaintiff is libel proof. *Wynberg v. Nat’l Enquirer*, 564 F. Supp. 924, 928 (C.D. Cal. 1982); *Wynn v. Chanos*, 75 F. Supp. 3d 1228, 1239-40 (N.D. Cal. 2014). Plaintiff is also a public figure and fails to plead actual malice. *N.Y. Times v. Sullivan*, 376 U.S. 254, 279-280 (1964). Finally, each allegedly defamatory statement is protected. *See Partington v. Bugliosi*, 56 F.3d 1147, 1156-57 (9th Cir. 1995).
- b. Plaintiff’s right of publicity claim fails because the documentary *The Hatchet Wielding Hitchhiker’s* (the “Documentary”) use of Plaintiff’s name and likeness is protected by the First Amendment and because C.C.P. § 3344 expressly exempts works like the Documentary. *See, e.g., Sarver v. Chartier*, 813 F.3d 891, 903 (9th Cir. 2016); *Daly v. Viacom*, 238 F. Supp. 2d 1118, 1123 (N.D. Cal.

2002); *de Havilland v. FX Networks*, 21 Cal. App. 5th 845, 857-59 (2018).

- c. Plaintiff's false light and intentional infliction of emotional distress claims fail because they are duplicative of his defamation and right of publicity claims. *Sharij v. Vujicic*, 2022 WL 1843151, at *6 (C.D. Cal. Jan. 19, 2022) (quoting *Eisenberg v. Alameda Newspapers*, 74 Cal. App. 4th 1359, 1385 n.13 (1999)); *Sarver v. Hurt Locker*, 2011 WL 11574477, at *11 (C.D. Cal. Oct. 13, 2011).
- d. Plaintiff's public disclosure of private facts claim fails because Plaintiff fails to identify any private fact disclosed by the Documentary. *See Moreno v. Hanford Sentinel*, 172 Cal. App 4th 1125, 1130 (2009).

Accordingly, the Court **ORDERS** that Plaintiff's claims against Netflix for defamation, false light, right of publicity, intentional infliction of emotional distress, and public disclosure of private facts are **STRICKEN WITH PREJUDICE**.

Pursuant to C.C.P. § 425.16(c), the Court further **ORDERS** Plaintiff to pay Netflix's attorneys' fees in connection with this Motion, in an amount to be determined by subsequent motion filed within fourteen days of this order.

IT IS SO ORDERED.

DATED: _____

By: _____
Josephine L. Staton
United States District Judge